

ACCOUNTANTS' ROLE IN THE BENEFICIAL OWNERSHIP REPORTING REQUIREMENT UNDER THE CORPORATE TRANSPARENCY ACT

By Cynthia S. Butera and Kevin Shaftan

There has been a proliferation of articles and news blasts across the accounting profession over the past several months concerning the Corporate Transparency Act (CTA) and its newly established requirement to report on the beneficial ownership information (BOI) of reporting companies. While accountants' exposure to risk associated with assisting clients with their reporting requirements under the CTA has not been fully borne out, accountants should heed the considerations discussed herein before proceeding into currently uncharted waters. For now, practitioners should stick with what they know, and avoid taking on these new and uncertain compliance obligations on behalf of their clients, until such time as additional guidance arrives from the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

What Are the New Beneficial Ownership Reporting Requirements

Who must report?

The CTA requires so-called "reporting companies" to file reports with FinCEN identifying the company's beneficial owners and providing certain other information. All domestic and foreign entities formed or registered to do business in the United States must file a BOI report unless they meet one or more of the 23 filing exceptions.

The CTA defines a beneficial owner of an entity as any individual who, directly or indirectly, (1) owns or controls not less than 25 percent equity in the entity or (2) exercises substantial control over the entity. Generally, an individual exercises "substantial control" over an entity if the individual (1) serves as a senior officer, (2) has authority over the appointment or removal of a senior officer or a majority of the board of directors, or (3) directs, determines or has substantial influence over important business decisions.

When must the BOI report be filed?

Reporting companies created before or registered to do business as of December 31, 2023, have until January 1, 2025, to file their initial BOI report with FinCEN. Reporting companies created or registered to do business on or after January 1, 2024, have ninety (90) days from the date of their registration to file an initial BOI report. After filing an initial BOI report, reporting companies only have thirty (30) days to file any updated reports detailing any changes about the reporting company and/or its beneficial owners.

Generally, the BOI report should include each beneficial owner's name, date of birth, residential or business address, and a unique identifying number from an acceptable identification document (such as a state driver's license or passport).

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Penalties

Willfully providing false information to FinCEN or failing to timely report can result in fines of \$591 per day, increased from \$500 effective January 25, 2024, for each day that the violation is not addressed and criminal fines up to \$10,000 and imprisonment for up to two years.

Practical Considerations and Application for Accountants

In light of the "newness" of this statute, there is a fair amount of uncertainty as to just how problematic the reporting requirements can be under the CTA. Further, there appears to be two schools of thought in the accounting profession as to how to respond to clients requesting their services in complying with the CTA/BOI reporting requirements.

On one hand, the profession is loath to take on these compliance obligations for their clients because, if history repeats itself, there can be stiff and severe penalties for noncompliance that the clients will seek to pass on to their accountants. This lesson has been learned by practitioners from other FinCEN reporting requirements, where failures to report foreign interests and holdings led to large, unexpected penalties against their clients, the fallout of which was an increase in claims against accountants for these FinCEN Form 114 compliance obligations.

On the other hand, these new BOI reporting requirements may be viewed by some accounting practitioners as an opportunity to offer new services to clients, representing a significant growth opportunity for their business. Certainly, if practitioners choose to navigate these uncharted waters, they should do so only with proper safeguards and precautions.

Given that existing companies have until January 1, 2025, to determine what their reporting obligations are, accounting professionals should hold off on providing these compliance services until further guidance is forthcoming. Moreover, accounting professionals need to be clear in their current tax engagement letters that such compliance services are specifically excluded from the scope of the engagement.

Those accounting professionals that have clients contemplating forming companies this year should inform those clients of the shorter reporting requirement and urge them to seek legal counsel as to the option of delaying the formation of the new entity to put off triggering their reporting obligations under the CTA until such time that the impact of the CTA reporting requirements is clearer.

Proceed with Caution

Accounting professionals that choose to provide compliance reporting services for their clients under the CTA/BOI should do so with caution. First, the accounting professionals must be clear in their engagement letters that the service they are engaging to perform is solely the initial reporting obligation on behalf of the client under the CTA. There should be clear and unequivocal language inserted in the engagement letter disclaiming any responsibility or undertaking on the part of the accounting professional for the client's continued reporting obligation under the CTA related to any change in the beneficial ownership information.

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Of course, given the lack of guidance currently surrounding BOI reporting, it is good practice to consult with legal counsel when and if providing such services to clients.

Additionally, accounting professionals should exercise thoughtfulness and restraint when receiving questions and inquiries regarding interpretation of the CTA and the BOI reporting requirements. In such instances, accounting professionals should advise clients to consult with their legal counsel and follow up and confirm that guidance in writing.

It is worth noting that initial reactions from certain state boards of accountancy seem to be leaning toward treating the accounting professionals' insertion in the BOI reporting process as potentially being the "unauthorized practice of law." While that may or may not be the final verdict, it is further reason to slow down and let the guidance catch up to the rule before rendering professional compliance services regarding BOI reporting.

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